

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

JAMES HANTON :  
 : PRISONER  
 v. : Case No. 3:98cv706 (CFD)  
 :  
 WARDEN M. STRANGE, et al.<sup>1</sup> :

RULING ON MOTIONS FOR SUMMARY JUDGMENT

The Plaintiff, James Hanton, was confined at the State of Connecticut MacDougall Correctional Institution when he filed this action. He currently resides in New Haven, Connecticut. He commenced this civil rights action pursuant to 28 U.S.C. § 1915. Defendants Zarrella and Johnson are employed by the State of Connecticut Department of Public Health. Hanton alleges that Zarrella and Johnson failed to investigate his complaints concerning medical care he received while incarcerated at the

---

<sup>1</sup>The plaintiff named James R. Smith, Kathleen C. Zarrella, Maria Johnson, Maurice Cooper, Shirley Knope, Michael L. Moscovitz and Vito A. Castignoli in the first amended complaint. On August 30, 2000, the court granted the plaintiff's motion to withdraw the action against Wardens Strange and Bundy, who were named in the original complaint. On March 19, 2002, the court dismissed the first amended complaint as to all claims except the plaintiff's medical claims against defendants Zarrella, Johnson, Knope and Cooper in their individual capacities. On March 23, 2003, the court granted the plaintiff leave to file an amended complaint as to his claims of denial of medical treatment as to defendants Zarrella, Johnson, Cooper, and Knope, but denied the plaintiff leave to amend to add claims against Jack Maleh, Patricia Pace, Bryan Castle, Esther McIntosh and CTO James as new defendants. The court has also dismissed all claims against defendant Knope pursuant to Rule 4(m), Fed. R. Civ. P. Thus, the case remains pending only against defendants Zarrella, Johnson and Cooper in their individual capacities.

State of Connecticut Cheshire Correctional Facility ("Cheshire"). He also alleges that the defendant Cooper, a nursing supervisor at Cheshire, was deliberately indifferent to his back and neck injuries. Pending before the court is a motion for summary judgment filed by defendants Zarrella and Johnson and a separate motion for summary judgment filed by defendant Cooper. For the reasons set forth below, the motions for summary judgment are granted.

I. Standard of Review

"The trial court's task at the summary judgment motion stage of the litigation is carefully limited to discerning whether there are genuine issues of material fact to be tried, not to deciding them. Its duty, in short, is confined at this point to issue-finding; it does not extend to issue-resolution." Gallo v. Prudential Residential Servs. Ltd. P'ship, 22 F.3d 1219, 1224 (2d Cir. 1994). The burden is on the moving party to establish that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter of law. See Rule 56(c), Fed. R. Civ. P.; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986); Marvel Characters, Inc. v. Simon, 310 F.3d 280, 286 (2d Cir. 2002) (citing Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970)). Not all factual disputes are material. The court considers the substantive law governing the case to identify those facts which are material. "[O]nly disputes over facts that

might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson, 477 U.S. at 248.

A court must grant summary judgment "'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact . . . .'" Miner v. Glen Falls, 999 F.2d 655, 661 (2d Cir. 1993) (citation omitted). An asserted dispute over a material fact is considered "genuine," so as to defeat the motion for summary judgment, "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." McCarthy v. American Int'l Group, Inc., 283 F.3d 121, 124 (2d Cir. 2002).

Even though the burden is on the moving party to demonstrate the absence of any genuine factual dispute, the party opposing summary judgment "may not rest upon mere conclusory allegations or denials, but must bring forward some affirmative indication that his version of relevant events is not fanciful." Podell v. Citicorp Diners Club, Inc., 112 F.3d 98, 101 (2d Cir. 1997) (internal quotation marks and citations omitted). It "'must do more than simply show that there is some metaphysical doubt as to the material facts.'" Caldarola v. Calabrese, 298 F.3d 156, 160 (2d Cir. 2002) (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986)). The non-moving party

"may not rely on conclusory allegations or unsubstantiated speculation." Fujitsu Ltd. v. Federal Express Corp., 247 F.3d 423, 428 (2d Cir. 2002) (internal quotation marks and citation omitted). Instead, the non-moving party must produce admissible evidence that supports its pleadings. See First Nat'l Bank of Ariz. v. Cities Serv. Co., 391 U.S. 253, 289-90 (1968). A "'mere existence of a scintilla of evidence' supporting the non-movant's case is also insufficient to defeat summary judgment." Niagara Mohawk Power Corp. v. Jones Chem., Inc., 315 F.3d 171, 175 (2d Cir. 2003) (quoting Anderson, 477 U.S. at 252).

In reviewing a motion for summary judgment the court resolves all ambiguities and draws all inferences in favor of the nonmoving party. See Niagara Mohawk, 315 F.3d at 175. Thus, "[o]nly when reasonable minds could not differ as to the import of the evidence is summary judgment proper." Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir.), cert. denied, 502 U.S. 849 (1991). See also Suburban Propane v. Proctor Gas, Inc., 953 F.2d 780, 788 (2d Cir. 1992). Where one party is proceeding pro se, the court reads the pro se party's papers liberally and interprets them to raise the strongest arguments suggested therein. See Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir. 1994). Despite this liberal interpretation, however, a "bald assertion," unsupported by evidence, cannot overcome a properly supported motion for summary judgment. Carey v. Crescenzi, 923 F.2d 18, 21 (2d Cir. 1991). A

motion for summary judgment cannot be defeated "merely . . . on the basis of conjecture or surmise." Trans Sport, Inc. v. Starter Sportswear, Inc., 964 F.2d 186, 188 (2d Cir. 1992) (citation and internal quotation marks omitted).

## II. Facts<sup>2</sup>

The claims against defendants Zarrella and Johnson are significantly different than the claims against defendant Cooper. Accordingly, the court sets forth the facts relating to the different claims in separate sections.

### A. Claims Against Defendants Zarrella and Johnson

In March 1999, Kathleen Zarrella was employed at the Connecticut Department of Public Health ("DPH") as a Public Health Services Manager. She supervised a unit which investigated claims against individuals who are licensed by the DPH, including physicians, dentists, nurses and psychologists. On June 1, 1999, Zarrella became Acting Director of the Division of Health Systems Regulation within the DPH. In her role as acting director, Zarrella was responsible for determining whether

---

<sup>2</sup>The facts are taken from the defendants' Local Rule 56(a)1 Statement of Material Facts Not in Dispute [doc. # 57-1]; the plaintiff's Local Rule 56(a)2 Statement and exhibits attached to his Memorandum in Opposition to Motion for Summary Judgment [doc. # 70-1]; the Affidavits of Kathleen Zarrella, Kathleen Boulware and Maria Johnson; and the exhibits attached to the defendants' Memorandum of Law in Support of Motion for Summary Judgment [doc. # 57-2].

to proceed with a license violation proceeding and whether to prosecute a licensed individual.

Defendant Maria Johnson has been employed by the DPH since 1978. In March 1999, Johnson was a Health Program Associate. She conducted investigations of complaints against physicians, dentists, nurses and psychologists who were licensed by the DPH.

On January 25, 1999, Hanton submitted a complaint to the DPH concerning his medical treatment by a physician at Cheshire, Jack Maleh, M.D., concerning his right knee and other problems. On February 25, 1999, Zarrella sent a letter to Hanton informing him that the complaint had been received and, on March 2, 1999, Zarrella opened Hanton's complaint as a "petition". On March 3, 1999, Zarrella notified Hanton that Defendant Johnson had been assigned to investigate his petition.

As part of the investigation, Johnson sent Hanton's medical records to Dr. Marvin Den, an independent medical consultant, to issue an opinion as to whether Dr. Maleh had treated Hanton below the applicable standard of care. Dr. Den is a physician who has been licensed to practice medicine and surgery in the State of Connecticut since 1981. On June 29, 1999, in response to Hanton's letter of June 16, 1999, Kathleen Boulware, a Supervising Nurse Consultant, informed Hanton of the impending review.

On August 9, 2000, Dr. Den sent a letter to Johnson indicating that he believed Dr. Maleh had provided Hanton with appropriate medical care. On September 22, 2000, Johnson submitted her investigative report to Boulware. Johnson made no decision or recommendation regarding the issue of whether disciplinary action should be taken against Dr. Maleh. After review of Hanton's file and the report by Dr. Den, Boulware notified Hanton that the DPH had completed its investigation and concluded that the care provided by Dr. Maleh met the acceptable standards of medical practice. Boulware dismissed the petition against Dr. Maleh.

On March 4, 1999, Hanton also submitted a complaint to the DPH against Defendant Maurice Cooper, a medical supervisor at Cheshire<sup>3</sup>. On March 15, 1999, Zarrella notified Hanton that his complaint had been received by the DPH and that it would be reviewed by the Division of Health Systems Regulation. Zarrella also informed Hanton that if the DPH decided to pursue an investigation, he would be contacted by the investigator assigned to the case. Zarrella did not open the complaint against Cooper as a "petition" because the complaint alleged inaction by Cooper in his role as an administrator and not as a licensed health care

---

<sup>3</sup>It is unclear whether Cooper was located at Cheshire or the University of Connecticut Health Center in Farmington, Connecticut. However, that does not appear to be material, as there is no evidence he actually provided health care to Hanton.

provider. Thus, the complaint was outside the jurisdiction of the DPH. Zarrella's decision not to open a petition against Cooper was based on her years of experience as a health care provider and her professional judgment.

DPH employees do not provide direct medical care to patients. Neither Zarrella nor Johnson have ever met Hanton or have any recollection of ever speaking to him.

B. Claims Against Defendant Cooper<sup>4</sup>

In 1998 and 1999, Cooper was an employee of the University of Connecticut Medical Health Center and, as mentioned, was assigned to Cheshire as a Correctional Health Nursing Supervisor. During this time, Hanton was being treated for a chronic problem with his right knee. He also complained of pain in his neck and back, as described below.

On January 15, 1999, Hanton complained of neck and back pain and reported that his current pain medication was not providing him with relief. A nurse scheduled him to see Dr. Maleh at

---

<sup>4</sup> The facts regarding the claim of deliberate indifference to medical needs against defendant Cooper are taken from defendant Cooper's Local Rule 56(a)1 Statement and exhibits attached to the memorandum in support of the motion for summary judgment. (See doc. # 61.) Despite specific notice from the court regarding the proper response to a motion for summary judgment, (see docs. ## 62, 72), the plaintiff has not filed any opposition directed to the merits of defendant Cooper's motion. Thus, defendant Cooper's facts are deemed admitted. See D. Conn. L. Civ. R. 56(a)1 ("All material facts set forth in said statement will be deemed admitted unless controverted by the statement required to be served by the opposing party in accordance with Rule 56(a)2.")

Cheshire, who was also treating him for his knee problem. On January 26, 1999, Dr. Maleh examined Hanton and diagnosed him with degenerative joint disease and prescribed new pain medication.

In February 1999, Hanton again complained of pain in his right knee. Dr. Maleh examined him once again and noted that he would continue to conservatively manage the symptoms. During this time, a social worker in the mental health unit met with Hanton on several occasions and instructed Hanton on relaxation and re-focusing techniques to deal with the pain he was experiencing from his various injuries. Ultimately, Hanton had surgery on his right knee, in the fall of 1999.

On July 7, 1999, Hanton wrote to a Health Services Administrator requesting assistance in obtaining treatment for his neck and back pain. On July 13, 1999, a regional health services administrator informed Hanton that she had referred his request to Nursing Supervisor Cooper to schedule an evaluation by a staff physician. On July 21, 1999, Dr. Maleh examined Hanton in response to his continued complaints of back and neck pain.

### III. Discussion

As a preliminary matter, the court will address plaintiff's motion for review of Magistrate Judge Garfinkel's ruling granting defendant Cooper's motion for extension of time to file a motion for summary judgment. Although the motion is entitled "Notice of

Appeal," it is clearly an objection to the magistrate judge's ruling. (See docs. ## 72, 76.)

With certain listed exceptions, a district judge may refer pretrial motions to a magistrate judge for determination. See 28 U.S.C. § 636(b)(1)(A). Pursuant to Rule 72(a), Fed. R. Civ. P., a party may object to a ruling or order issued by a magistrate judge "[w]ithin ten days after being served with a copy of the . . . order." Rule 72(a), Fed. R. Civ. P. A district judge may "modify or set aside any portion of the magistrate judge's order" only if the party shows that the magistrate judge's order is "clearly erroneous or contrary to law." Id.

Here, Judge Garfinkel's Ruling and Order was file-stamped on October 28, 2004, and docketed by the Clerk's Office on November 2, 2004. Presumably, the Ruling was mailed to the plaintiff the same day that it was docketed. The plaintiff does not allege and there is no evidence to suggest that he did not receive the Ruling within five days of the date the Clerk's Office docketed it. Thus, the plaintiff's motion for review, which is dated January 7, 2005, and filed on January 12, 2005, is denied as untimely. Furthermore, even if the motion were timely filed, it would be denied. Magistrate Garfinkel's ruling granting defendant Cooper's motion for extension of time is not clearly erroneous or contrary to law.

A. Motion for Summary Judgment Filed by Defendants Zarrella and Johnson

Defendants Zarrella and Johnson move for summary judgment on four grounds. They argue that (1) Hanton fails to state a claim upon which relief may be granted; (2) Hanton fails to allege the personal involvement of defendant Johnson; (3) defendant Zarrella is absolutely immune from liability due to her role as a prosecutor in determining whether to investigate and/ or initiate disciplinary action against defendants Cooper and Maleh; and (4) they are entitled to qualified immunity. Defendants Zarrella and Johnson first argue that Hanton's allegations against them fail to state a claim upon which relief may be granted. The court will address the claims against defendant Johnson first.

1. Claim Against Defendant Johnson

\_\_\_\_\_Hanton alleges that he filed a complaint against Dr. Maleh in January 1999, and Zarrella assigned Johnson to investigate the complaint. Hanton wrote to Johnson in June 1999, requesting an update on the status of the investigation. Kathleen Boulware informed Hanton that the investigation was underway and that he would be notified when the investigation was complete. Hanton claims that he was never notified regarding the investigation and assumed that the complaint was never investigated.

The defendants have submitted a letter from Boulware to Hanton dated September 22, 2000, in which Boulware informed Hanton that the investigation of the complaint had been

completed. Boulware also informed Hanton that the DPH had concluded that Dr. Maleh had provided an acceptable level of medical care to him. The defendants have also submitted the investigative report prepared by defendant Johnson relating to Hanton's complaint against Dr. Maleh and a letter from Dr. Den to defendant Johnson concerning his review of Hanton's complaint and medical records.

It is evident - and undisputed - that the DPH through defendant Johnson thoroughly investigated Hanton's complaint against Dr. Maleh. In addition, the decision not to pursue disciplinary action against Dr. Maleh was made by Kathleen Boulware, the Supervising Nurse Consultant. Hanton does not offer any evidence or argument to the contrary. Accordingly, Hanton has failed to meet his burden of demonstrating that there are any issues of material fact in dispute regarding the investigation of his complaint against Dr. Maleh by defendant Johnson. The motion for summary judgment is granted as to all claims against defendant Johnson.

## 2. Claim Against Defendant Zarrella

Hanton does not allege a claim against Zarrella concerning the DPH investigation of Dr. Maleh. Rather, he challenges Zarrella's handling of his complaint against Cooper.

Hanton alleges that on March 4, 1999, he filed a complaint with the DPH against defendant Cooper concerning lack of medical

treatment for his knee. He alleges that on March 15, 1999, defendant Zarrella informed him that his complaint would be investigated by the DPH. He alleges that defendant Zarrella ignored a letter that he sent to her in June 1999, regarding the investigation of his complaint. He assumed that defendant Zarrella never investigated his complaint.

The defendants have filed a copy of the letter sent to Hanton by Zarrella on March 15, 1999. The letter informed Hanton that his complaint had been received by the DPH and would be reviewed. It also informed Hanton that if the DPH decided to undertake an investigation, the investigator assigned to the case would contact him. Thus, Zarrella never informed Hanton that the DPH would undertake an investigation of his complaint. In fact, defendant Zarrella did not undertake an investigation of Hanton's complaint against Cooper because she determined that the DPH did not have jurisdiction over it because it did not involve health care performed by Cooper.

The defendants argue that Hanton has not alleged that the failure of Zarrella to investigate his complaint against defendant Cooper violated any of his federally or constitutionally protected rights. In response, Hanton contends that Zarrella violated two Connecticut statutes governing duties and powers of the Connecticut DPH and the Eighth Amendment's

prohibition against deliberate indifference to serious medical needs.

Deliberate indifference by prison officials to a prisoner's serious medical need constitutes cruel and unusual punishment in violation of the Eighth Amendment. See Estelle v. Gamble, 429 U.S. 97, 104 (1976). Hanton did not seek medical care from defendant Zarrella. Rather, he requested that she investigate whether Cooper had failed to provide him with medical care that met acceptable standards of practice in the State of Connecticut. The sanctions which the DPH may impose if a determination is made that a health care provider has failed to perform at or above acceptable standards of practice do not include requiring the health care provider or some other provider to treat the claimant. See Conn. Gen. Stat. § 19a-17. Furthermore, Zarrella and Johnson have filed affidavits stating that as employees of the DPH they do not provide direct medical care to individuals. Hanton has submitted no evidence to contradict these affidavits. Thus, Hanton has failed to allege facts or submit evidence to demonstrate that Zarrella's decision regarding his complaint against Cooper constituted deliberate indifference to his medical needs. Accordingly, Hanton has not met his burden of demonstrating that Zarrella violated any of his federally or constitutionally protected rights when she decided not to

investigate his complaint against Cooper. The motion for summary judgment is granted as to all federal claims against Zarrella.

Because the court has dismissed all federal claims against defendants Johnson and Zarrella, the court declines to exercise supplemental jurisdiction over any state law claims raised by Hanton. See 28 U.S.C. § 1367(c)(3); Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 (1988) ("in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine -judicial economy, convenience, fairness, and comity- will point toward declining to exercise jurisdiction over the remaining state-law claims"); Spear v. Town of West Hartford, 771 F. Supp. 521, 530 (D. Conn. 1991) ("absent unusual circumstances, the court would abuse its discretion were it to retain jurisdiction of the pendent state law claims on the basis of a federal question claim already disposed of"), aff'd, 954 F.2d 63 (2d Cir.), cert. denied, 506 U.S. 819 (1992).

B. Defendant Cooper's Motion for Summary Judgment

Defendants Zarrella and Johnson filed their motion for summary judgment on April 8, 2004 and defendant Cooper filed his motion for summary judgment on April 12, 2004. On April 21, 2004, the court issued an Order of Notice to Pro Se Litigant informing Hanton that he must respond to defendant Cooper's motion for summary judgment and that if he failed to do so within

21 days of the date the motion was filed, the court might grant the motion absent objection. On April 23, 2004, Hanton filed an objection to defendant Cooper's motion for summary judgment on the ground that it was filed beyond the dates set forth in the court's scheduling order. On June 24, 2004, Hanton filed his opposition to the motion for summary judgment filed by defendants Zarrella and Johnson. On October 28, 2004, the court overruled Hanton's objection to defendant Cooper's motion for summary judgment and directed him to file his memorandum in response to the motion for summary judgment within 20 days. The court again provided Hanton with notice of the requirements of opposing a motion for summary judgment. (See doc. #72.) On November 30, 2004, the court granted Hanton's request for a 60-day extension of time to respond to defendant Cooper's motion for summary judgment and directed Hanton to file his response on or before January 10, 2005. To date, Hanton has not filed his response to the motion. On February 10, 2005, Hanton notified the court that he had been discharged from prison and provided a mailing address in New Haven, Connecticut. Hanton has not contacted the court at any other time since his discharge.

Defendant Cooper raises five grounds in support of his motion for summary judgment: (1) Hanton's claims are barred by the statute of limitations; (2) Hanton fails to state a claim for deliberate indifference to a serious medical need; (3) Hanton

fails to allege his personal involvement in the denial of medical care; (4) Hanton's claims against him in his official capacity are barred by the Eleventh Amendment; and (5) he is protected by qualified immunity. The court considers several of these grounds below.

1. Statute of Limitations

Cooper states that he was served with a copy of the amended complaint more than three years after the date of the alleged violations of Hanton's Eighth Amendment rights. Thus, he argues that all claims against him are barred by the statute of limitations.

When an inmate files an action in forma pauperis the responsibility for service is assumed by the court. See 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . ."); Antonelli v. Sheahan, 81 F.3d 1422, 1426 (7th Cir. 1996) (an inmate may rely on the United States Marshal Service to serve process); Armstrong v. Sears, 33 F.3d 182, 188 (2d Cir. 1994) (an incarcerated inmate proceeding in forma pauperis is entitled to rely on service by the U.S. Marshal). On January 24, 2000, Hanton filed his first amended complaint naming Cooper as a defendant. On March 19, 2002, the court issued an order directing Hanton to complete certain forms to enable the United States Marshal to serve the first amended complaint on Cooper in his individual capacity. Hanton returned

completed United States Marshal Service forms to the court in April 2002, and the Clerk forwarded the papers to the United States Marshal for service on Cooper on April 9, 2002. On August 1, 2002, the United States Marshal filed a return of service indicating that service of the amended complaint on Cooper was not executed. (See doc. # 18.)

On March 25, 2003, Hanton filed a second amended complaint. It was not until May 12, 2003, that the court ordered the United States Marshal to personally serve Cooper with a copy of the second amended complaint. The United States Marshal served Cooper with a copy of the second amended complaint on June 3, 2003. Because an inmate must rely on the court and the United States Marshal Service to effect service of the complaint, any delay attributed to the court or the Marshal Service tolls the statute of limitations. Thus, the motion for summary judgment is denied on this ground.

## 2. Failure to State a Claim

Hanton alleges that Cooper was deliberately indifferent to his back and neck injuries because he failed to respond to his requests regarding treatment for those injuries by other medical personnel. Cooper argues that Hanton fails to state a claim that he was deliberately indifferent to a serious medical need.

Deliberate indifference by prison officials to a prisoner's serious medical need constitutes cruel and unusual punishment in

violation of the Eighth Amendment. See Estelle v. Gamble, 429 U.S. 97, 104 (1976). To prevail on such a claim, however, Hanton must allege "acts or omissions sufficiently harmful to evidence deliberate indifference" to his serious medical need. Id. at 106. He must show intent to either deny or unreasonably delay access to needed medical care or the wanton infliction of unnecessary pain by prison personnel. See id. at 104-05. Mere negligence will not support a section 1983 claim; the conduct complained of must "shock the conscience" or constitute a "barbarous act." McCloud v. Delaney, 677 F. Supp. 230, 232 (S.D.N.Y. 1988) (citing United States ex rel. Hyde v. McGinnis, 429 F.2d 864 (2d Cir. 1970)).

"Medical malpractice does not become a constitutional violation merely because the victim is a prisoner." Estelle, 429 U.S. at 106. A treating physician will be liable under the Eighth Amendment only if his conduct is "repugnant to the conscience of mankind." Tomarkin v. Ward, 534 F. Supp. 1224, 1230 (S.D.N.Y. 1982) (quoting Estelle, 429 U.S. at 105-06). Inmates do not have a constitutional right to the treatment of their choice. See Dean v. Coughlin, 804 F.2d 207, 215 (2d Cir. 1986). Thus, mere disagreement with prison officials about what constitutes appropriate care does not state a claim cognizable under the Eighth Amendment. See Ross v. Kelly, 784 F. Supp. 35,

44 (W.D.N.Y.), aff'd, 970 F.2d 896 (2d Cir.), cert. denied, 506 U.S. 1040 (1992).

There are both subjective and objective components to the deliberate indifference standard. See Hathaway v. Coughlin, 37 F.3d 63, 66 (2d Cir. 1994), cert. denied sub nom. Foote v. Hathaway, 513 U.S. 1154 (1995). The alleged deprivation must be "sufficiently serious" in objective terms. Wilson v. Seiter, 501 U.S. 294, 298 (1991). See also Nance v. Kelly, 912 F.2d 605, 607 (2d Cir. 1990) (Pratt, J., dissenting) ("'serious medical need' requirement contemplates a condition of urgency, one that may produce death, degeneration, or extreme pain"). The Second Circuit has identified several factors that are highly relevant to the inquiry into the seriousness of a medical condition: "[t]he existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual's daily activities; or the existence of chronic and substantial pain.'" Chance v. Armstrong, 143 F.3d 698, 702 (2d Cir. 1998) (citation omitted). In addition, where the denial of treatment causes plaintiff to suffer a permanent loss or life-long handicap, the medical need is considered serious. See Harrison v. Barkley, 219 F.3d 132, 136 (2d Cir. 2000).

In addition to demonstrating a serious medical need to satisfy the objective component of the deliberate indifference

standard, the plaintiff also must present evidence that, subjectively, the charged prison official acted with "a sufficiently culpable state of mind." Hathaway, 37 F.3d at 66. "[A] prison official does not act in a deliberately indifferent manner unless that official 'knows and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.'" Id. (quoting Farmer v. Brennan, 511 U.S. 825, 837 (1994)).

Hanton alleges that while Cooper was a nursing supervisor at Cheshire, he wrote to Cooper in October 1998 because he was not receiving treatment for his neck and back injury "through sick call and conservative management was not working." Supplemental Compl. at 4. He claims that Cooper did not respond to the letter. Hanton claims that in February 1999, Cooper denied an appeal of a grievance filed by him concerning treatment for his neck and back injury. Hanton also claims that Cooper failed to provide him with treatment after Warden Wezner indicated that he had notified Cooper of Hanton's complaints. Hanton has provided no evidence to support his allegations.

The medical records submitted by Cooper show that medical personnel at Cheshire repeatedly and frequently examined and treated Hanton in response to his complaints of neck, back and

knee pain during the period from December 1998 through September 1999. He also does not allege that defendant Cooper, as a nursing supervisor, provided direct medical care to inmates during the time period in question<sup>5</sup>. In July 1999, a Regional Health Services Administrator at the University of Connecticut Health Center responded to a letter from Hanton seeking treatment for his neck and back injury. She indicated that she would refer Hanton's request to Cooper to ensure that Hanton was evaluated by the on-site physician at Cheshire as soon as possible. In response to that letter, Hanton was evaluated by the on-site physician seven days later. At that time, the physician completed a request for a neurological evaluation. Thus, Cooper, in his role as nursing supervisor, facilitated Hanton's evaluation by the on-site physician at Cheshire.

Hanton has failed to submit any evidence suggesting that Cooper did not respond to other requests to be treated or evaluated. Allegations in a complaint are insufficient to oppose a properly supported motion for summary judgment. See, e.g., Goenaga v. March of Dimes Birth Defects Found., 51 F.3d 14, 18 (2d Cir. 1995) (party opposing summary judgment may not rely on "mere allegations or denials" contained in his pleadings). The

---

<sup>5</sup>In his Local Rule 56 response to Zarrella and Johnson's motion for summary judgment, Hanton denied the paragraphs relating to Cooper's role. However, he provided no factual support that indicates Cooper provided any medical care or failed to respond to his requests.

medical records reflect that shortly after the dates Hanton complained of neck and back pain, he was evaluated and treated with various pain medications and was also instructed on various relaxation and re-focusing techniques. Hanton has not met his burden of presenting evidence in opposition to the motion to demonstrate a genuine issue of material fact regarding his medical care by Cooper. Accordingly, Cooper's motion for summary judgment is granted.

#### Conclusion

The Defendants' Motions for Summary Judgment [**docs. ## 57, 60**] are **GRANTED**. The plaintiff's Motion for Review [**doc. # 76**] is **DENIED**. The court declines to exercise supplemental jurisdiction over any state law claims raised by the plaintiff. See 28 U.S.C. § 1367(c)(3). The Clerk is directed to enter judgment in favor of defendants and close this case.

**SO ORDERED** this 30<sup>th</sup> day of March, 2005, at Hartford, Connecticut.

/s/ CFD  
Christopher F. Droney  
United States District Judge